

**ST 98-29**

**Tax Type: SALES TAX**

**Issue: Timely Filing Return To Which Overpayment Applied**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**XYZ CORPORATION,**

**Taxpayer**

**No. 98 ST 0000  
IBT.  
Claim for Credit**

**Mimi Brin  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. John Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue; Mr. Craig Westberg, for Taxpayer.

**Synopsis:**

This matter comes on for hearing pursuant to the protest and request for hearing filed by XYZ Corporation, Inc. (hereinafter referred to as the “taxpayer” or “XYZ”) following the Department’s denial of its Claim for Credit filed on April 16, 1996 (hereinafter referred to as the “Claim”). The basis of “XYZ”’s claim are its Sales and Use Tax returns for the months of January, 1995 and February, 1995, which it avers were each timely filed. Therefore, “XYZ” states that the assessments issued to it by the

Department, which it paid, assessing a late filing penalty with corresponding interest (NTL SB-9500000000000, based upon the January return), and tax and late payment penalty with applicable interest (NTL SB-9500000000000 based upon the February return), were incorrect and it is entitled to a return of the monies it paid on those assessments.

A hearing in this matter was held on July 7, 1998 whereat Mr. “Charleston Chew” appeared on behalf of “XYZ”, an owner of the business.<sup>1</sup> Following the submission of all evidence and a review of the record, it is recommended that the Department’s denial of “XYZ”’s claim be affirmed. In support of this recommendation, I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department’s *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the claim for credit filed by this taxpayer and the Department’s denial of it. Department Gr. Ex. No. 1
2. Taxpayer pays its Sales and Use taxes quarterly monthly, and files the reflecting tax returns on a monthly basis. Tr. pp. 5, 10
3. Taxpayer filed its January 1995 return showing an overpayment of \$201 comprised of a discount for timely filing and payment of \$191 and a \$10 overpayment of tax. Department Gr. Ex. 1 (January return, lines 10, 25, 28) This return was due to be filed by February 20, 1995. Department Gr. Ex. No. 1 (January return)

4. Taxpayer filed its February 1995 return applying the \$201 overpayment claimed on the January return, thus reducing its tax payments for that month by \$201. Department Gr. Ex. No. 1 (February return, line 19) This return was due to be filed by March 20, 1995. Department Gr. Ex. No. 1 (February return)
5. The Department received “XYZ”’s January return on March 23, 1995. Department Ex. No. 1 (January return)
6. The Department received “XYZ”’s February return on March 23, 1995, but had retained the envelope in which it was mailed which shows posting in the U.S. Mail on March 20, 1995. Department Ex. No. 1 (February return and copy of envelope received by Department)
7. “XYZ” timely filed its February return. Department Group Ex. No. 1; Tr. pp. 6-7
8. As a result of the late filing of the January return, the Department disallowed the \$191 timely payment discount taken by “XYZ”, and assessed a late filing penalty of \$546.00, with interest on the penalty of \$33.16. Department Gr. Ex. 1 (June 20, 1996 letter from the Department to “XYZ”)
9. As a result of the disallowance of the discount taken by “XYZ” on its January return, that amount, claimed by taxpayer to reduce its February payment, was improper, thereby “XYZ” underpaid its February liability, and tax was assessed for this underpayment in addition to a late payment

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<sup>1</sup> Mr. “Chew” is also taxpayer’s outside accountant. Tr. p.3

penalty. Department Gr. Ex. 1 (June 6, 1996 letter from Department to “XYZ”)

**Conclusions of Law:**

The Illinois Retailers’ Occupation Tax Act, 35 ILCS 120/1 *et seq.* (hereinafter referred to as the “Act”) provides that a retailer, such as “XYZ”, shall file a pertinent return with the Department on or before the twentieth day of each calendar month, reporting, *inter alia*, sales during the preceding calendar month. *Id.* at 120/3 When a return is timely filed and paid, the retailer is entitled to a percentage discount, which reduces the amount it is otherwise required to remit. *Id.*

“XYZ” made quarterly monthly payments (*Id.*) and filed monthly returns reporting its liability and payments for the preceding month. Its January 1995 return was to be filed by no later than February 20, 1995. If this occurred, “XYZ” would have been entitled to the \$191 discount it claimed on that return, and, along with a \$10 pre-paid overpayment, would have been entitled to the \$201 credit which it took on its subsequent month’s return. The problem, however, is that the Department’s stamp on the January return indicates that it received it on March 23, at least one month late. Therefore, the Department disallowed the discount taken on the January return causing the February payment of taxes due to be deficient, as the taxpayer applied its assumed overpayment to its February liability.

The late filing of the January return, and the ensuing changes to “XYZ”’s January and February returns resulted, apparently in the issuance of two Notices of Tax Liability. Department Gr. Ex. No. 1 (June 6, 1996 letter from Department to “XYZ” referencing assessment numbers SB9500000000000 for January, 1995 and SB9500000000000 for February, 1995) It is also these assessment liabilities for tax, penalties for late filing and late payment, along with the statutory interest on same, that the taxpayer paid. It is, apparently, this payment which forms the basis for the instant claim. Department Gr. Ex. No. 1 (Claim for Credit)<sup>2</sup>

Tax deductions and exemptions are privileges created by statutes as a matter of legislative grace, and, thus, the burden of proof is on the taxpayer claiming the right to them. Balla v. Department of Revenue, 96 Ill. App.3d 293 (1<sup>st</sup> Dist. 1981) In the instant matter, taxpayer avers that it timely filed its January return. The Department’s indications on the return show receipt by the Department on March 23, clearly a late filing, and, the Department states that it does not have the envelope in which the return was sent. Taxpayer’s response is an affidavit by Ms. “Jane Doe” (Taxpayer Ex. No. 1), which states, *inter alia*, that she prepared the return, had Mr. “XYZ” sign it and then deposited it into the U.S. mail box in front of the office building.

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<sup>2</sup> The Act provides, in pertinent part:

No claim may be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department... .

35 **ILCS** 120/6

If the taxpayer did not protest the assessments referred to in the June 6, 1996 letter from the Department to “XYZ”, and these were notices of tax liability as provided for under 35 **ILCS** 120/4 which became final, as a matter of law, and, if taxpayer paid these final liabilities, taxpayer is statutorily barred from filing this claim regardless of its merits. The Department, however, did not raise this issue, nor did it submit evidence of this scenario, except for that document which refers to and explains the specific assessments, and the claim, itself, which refers to the payment, by check, of these liabilities.

What is missing from this affidavit, is Ms. “Doe”’s statement as to when she prepared and filed the return. There is no issue here that the return was prepared and filed with the Department. What is at issue is when it was filed, and, this affidavit does not address that point. It is no less likely after reading this affidavit that Ms. “Doe” prepared and filed the return in March, along with the February one. While I appreciate Mr. “Chew”’s position that this taxpayer has made all of its required payments since its bankruptcy proceedings, and, as he believes, has done so in a timely fashion, “XYZ” has not, legally, shown that to be the case in this instance.

Because I am unable to find that the January return was timely filed, I must conclude that the Department correctly disallowed the timely payment and filing deduction taken by “XYZ” that month which created a perceived overpayment. Therefore, although the February return was timely filed, “XYZ” did not fully pay its tax liability for that period because it improperly included in its payments the supposed overpayment from the month before.

Therefore, the late filing penalty assessed by the Department for the January return and paid by the taxpayer, and the tax assessment and late payment penalty assessed for the February return and paid by the taxpayer, were correct. Taxpayer’s claim should stand as denied.

August 6, 1998

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Mimi Brin  
Administrative Law Judge